IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 75 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

ATUL PRODUCTS LTD.

Appearance:

MR MANISH R BHATT for Petitioner

MR MANISH J SHAH for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 15/02/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

At the instance of the revenue, three questions

are referred to us for our opinion in respect of assessment year 1982-83. The questions are set out hereinafter.

Question No. 1 Whether in law and on facts, the Appellate Tribunal is right in deleting (1) medical benefit and (2) personal accident insurance premium u/s. 40(c) of the I.T. Act, 1961 ?

As far as reimbursement of medical benefits given to the Managing Director/Director of the Company is concerned, in Gujarat Steel Tubes Ltd. vs. CIT, (1994) 210 IT 358 and Ambica Mills Ltd. vs. CIT, (1999) 235 ITR 264 this Court has taken the view that such reimbursement does not amount to a benefit within the meaning of Section 40(c) of the Act. We accordingly answer this part of the question in the affirmative i.e. in favour of the assessee and against the revenue.

As far as personal accident insurance premia paid by the assessee on personal accident insurance policies in respect of the Managing Director/Director of the Company is concerned, in CIT vs. Ambica Mills Ltd., 236 ITR 921, this Court has laid down certain basis to determine whether the payment of premia on the personal accident policy in respect of the Managing Director/Director of a Company would amount to a benefit within Section 40(c) of the Act. Mr Naik, learned counsel for the revenue, therefore, submits that the matter may be remanded to the Assessing Officer for determining whether the tests laid down by this Court in the aforesaid decisions are satisfied or not. However, considering the fact that the amount of insurance premium involved is only Rs. 825/-, we decline to answer this part of question No. 1.

Question No. 2 Whether the Appellate Tribunal has been right in law in confirming the view taken by the CIT(A) in directing the ITO to take into account all the tours during the previous year relevant to the assessment year in question and then determining whether the amount was admissible under rule 6D ?

As far as this question is concerned, the controversy raised herein is squarely covered by the decision of this Court dated 6.2.2001 in Income Tax Reference No. 54 of 1988 wherein we have taken the view that for applying the ceiling limit under Rule 6D of the Income Tax Rules, each trip of an individual employee is required to be considered and that all the tours during the previous year are not to be grouped together.

Accordingly, we answer question No. 2 in the negative i.e in favour of the revenue and against the assessee.

Question No. 3 Whether in law and on facts relief u/s. 80J is required to be granted on the cost of uninstalled plant & machinery ?

Mr BB Naik, learned counsel for the revenue fairly states that the controversy is concluded in favour of the assessee and against the revenue by the decision of this Court in CIT vs. Gujarat State Fertilizer Co. Ltd., (1996) 219 ITR 550 wherein this Court has held that in computing the capital employed for the purpose of relief under Section 80J, the amount representing machinery acquired during the previous year, even if installed later on, ought to be taken into consideration.

In view of the above decision, we answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

The reference accordingly stands disposed of with no order as to costs.

(J.M. Panchal, J.)

(M.S. Shah, J.)

sundar/-